

International application number: PCT/AU02/00413

International filing date: 09/24/2005

US Application Number: 10/509,297

### **PETITION TO PERMIT FILING UNDER 37 CFR 1.47(b)**

ACN 106396696 Pty Limited of Unit 1, 66 Wolseley Road, Point Piper NSW 2027 Australia, hereby petitions for filing under 37 CFR 1.47(b) and waiver of the requirement that the inventor must be presented with the application papers.

The above-identified petitioner believes this action is necessary to preserve the rights of the petitioner.

The grounds for filing under 37 CFR 1.47(b) are as follows:

1. This petition relates to patent specification PCT/AU02/00413.
2. ACN 106396696 Pty Limited has been assigned the entire right, title and interest to patent specification PCT/AU02/00413.
3. I believe Mr Barry Small is the original and first inventor of the subject matter which is claimed and for which a patent is sought.
4. The last known address of Mr Barry Small is 107 Warren Road, Smithfield Australia 2164.
5. Mastercool International Pty Limited filed the original patent application in Australia when Mr Barry Small was a Director of Mastercool International Pty Limited.
6. Under Australian law, the applicant and not the inventor has the right, title and interest in the invention.
7. On 25 March 2002 Mastercool International Pty Limited assigned the entire right, title and interest of the patent application to Focus Thermal Technologies (International) Limited, certified copy attached.
8. Mr Barry Small was a company Director of Focus Thermal Technologies (International) Limited.
9. Focus Thermal Technologies (International) Limited changed its name to Focus Thermal Technologies Limited on 24 June 2002 (Attachment 1).
10. In 2003, Mr Barry Small resigned as a director of Focus Thermal Technologies Limited.

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FEB 20 2004

11. On or about 21 September 2004, Focus Thermal Technologies Limited forwarded a transmittal letter to the United States designated/elected office concerning a submission under 35 USC 371 in respect of PCT/AU02/00413.
12. On 28 September 2004, ACN 106396696 Pty Limited acquired all of the assets of Focus Thermal Technologies Limited pursuant to a deed of sale, certified copy attached.
13. The assets of Focus Thermal Technologies Limited were expressed in the deed of sale to include all intellectual property.
14. As the owner of patent specification PCT/AU02/00413, ACN106396696 Pty Limited has the sole right to prosecute the patent application.
15. As a shareholder of Focus Thermal Technologies Limited, Mr Barry Small objected to the sale of the assets of the company.
16. Mr Small is a hostile party. Any contact, oral or written, with Mr Small results in death and other threats being communicated to me or my wife at our home.
17. These incidents have been reported to the NSW Police Service, and are recorded on their Computerised Operational Policing System (COPS) under Event Number 85802293. A recording of some of these threats is attached.
18. Due to the nature of these threats, the police and my solicitor have advised that all contact with Mr Small should be terminated.
19. An affidavit as proof of these facts is attached.
20. Further, as the invention has been assigned, Mr Small no longer has any right, interest or title in patent specification PCT/AU02/00413.
21. Accordingly, I petition for a waiver of the requirement to serve a copy of the application papers on Mr Small.
22. This petition is necessary to preserve the rights of ACN106396696 Pty Limited in relation to the filing of patent specification PCT/AU02/00413.
23. A Statement under 37 CFR 3.73(b) is attached and includes certified copies of the original assignment documents showing the chain of title. A copy has been forwarded to Assignment Recordation Services.

By



Garth Paton  
Company Director, ACN106396696 Pty Limited

Date 16 May 2005



# Certificate of Registration on Change of Name

This is to certify that

**FOCUS THERMAL TECHNOLOGIES (INTERNATIONAL)  
LIMITED**

**Australian Company Number 098 576 704**

did on the twenty-fourth day of June 2002 change its name to

**FOCUS THERMAL TECHNOLOGIES LIMITED**

**Australian Company Number 098 576 704**

The company is a public company.

The company is limited by shares.

The company is registered under the Corporations Act 2001 and  
is taken to be registered in New South Wales and the date  
of commencement of registration is the twenty-ninth day of October, 2001.

Issued by the  
Australian Securities and Investments Commission  
on this twenty-fourth day of June, 2002.

David Knott  
Chairman

CERTIFICATE

## AFFIDAVIT

I, Garth Alan Paton, of Unit 1, 66 Wolseley Road Point Piper, Company Director, make oath and say:

1. Mr Barry James Small is a shareholder in Focus Thermal Technologies Ltd.
2. I am a Director of Focus Thermal Technologies Ltd.
3. On or about 1 July 2004, Focus Thermal Technologies Ltd was placed under external administration.
4. On 4 August 2004, I received more than ten telephone calls from Mr Small at my home and mobile phone.
5. On 4 August 2004 and 5 August 2004 my wife received six telephone calls from Mr Barry Small on her mobile, which I have listened to.
6. In his telephone calls, Mr Small said words to the effect that I would be killed, that I was a dead man, that he had a contract out on my life, and that my wife would be raped.
7. On 5 August 2004 I reported these incidents to Rose Bay Police, and annexed hereto is a copy of the Event Number 85802293, (Annexure 1).
8. In or about January 2005, I forwarded correspondence to Mr Small requesting he remove some papers belonging to him from the former premises of Focus Thermal Technologies Ltd.
9. Following receipt of this correspondence, Mr Small telephoned my home and my wife's mobile and again made threats against us.
10. Both the police and my solicitor have advised me that o further contact, written or oral, should take place with Mr Small.

**Sworn by the  
deponent at Sydney Australia  
on the seventeenth day of May, 2005**

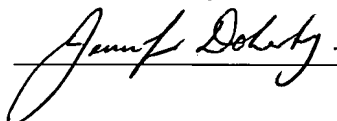
**Signature of deponent**

  
\_\_\_\_\_

**Before me:**

Jennifer Doherty

*Signature & title of person  
before whom affidavit is sworn*

  
\_\_\_\_\_, Solicitor

This is the document referred to as Annexure 1  
in the affidavit of Garth Alan Paton sworn  
at Sydney on 17 May 2005 before me,

*Jennifer Doherty*  
JENNIFER DOHERTY, SOLICITOR

**NSW Police** [www.police.nsw.gov.au](http://www.police.nsw.gov.au)

The NSW Police is committed to providing  
support to victims of crime. The Police Officer in  
charge of your matter is:



Name: RODWELL

**ROSE BAY LOCAL AREA COMMAND**

Tel 9362 6399

Fax 9362 6311

TTY 9211 3776

Time/Date of report: 5/8/04

COPS Event No: 85802293

Please feel free to contact the above mentioned officer if you have any enquiries  
about your matter and quote the COPS Event Number if known.



**NSW POLICE**

www.police.nsw.gov.au

ABN 43 408 613 180

**ROSE BAY  
LOCAL AREA COMMAND**

To Whom It May Concern:

On the 5<sup>th</sup> of August 2004, Mr Garth PATON and his wife Jennifer attended Rose Bay Police Station and reported a number of threatening phone calls they had received the previous evening from Mr Barry SMALL.

Several of these calls were recorded on Jennifer's mobile phone voicemail. I listened to these threats and recorded the incident in the COPS database, event number E: 85802293. As Mr and Mrs PATON requested that no formal action taken at that stage, there was no formal follow up as they believed that this may result in further harassment from Mr SMALL.

Due to the nature of these threats, it would be advised that Mr and Mrs PATON make no contact with Mr SMALL, either in writing or by other means, as these actions may invite further threats or unsolicited contact from Mr SMALL.

I advise that any correspondence from ACN106396696 Pty Ltd and/or other agencies of the company should have no further contact with Mr SMALL as this might ignite further annoyance to Mr and Mrs PATON.

Regards,

Brad RODWELL

Constable

Reg: 39930

Rose Bay Police

Ph: 93626399

**ROSE BAY LAC**

NSW Police Headquarters Locked Bag 5102 Parramatta NSW 2124

Tel 02 93626399 Fax 93626311 TTY (02) 9211 3776 (Hearing/Speech impaired) Enet 44399 Efax 44311

# Doherty Partners

Barristers & Solicitors

5 September 2005

Mr D Putonen  
Attorney Advisor  
Office of PCT Legal Administration  
US Patent & Trademark Office  
PO Box 1450  
ALEXANDRIA VA 22313-1450

Dear Mr Putonen

**Serial No. :10/509,297 PCT no: PCT/AU02/00413**  
**Thermal Storage Device**

I refer to your recent correspondence regarding the above matter.

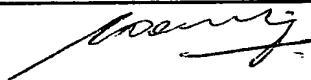
I can confirm that I have advised my client (Mr Garth Paton. ACN106396696 Pty Ltd) that, in my opinion, Mr Small will not sign any application papers.

Furthermore, I have advised my client that they should not contact Mr Small, whether in writing from this office or otherwise, to request his signature on the application papers. The threats previously made against Mr Paton and his wife included threats of death and rape. I am strongly of the opinion that any contact with Mr Small on behalf of Mr Paton will invite further threats or contact from Mr Small.

If you have any questions, please do not hesitate to contact me on +612 9601 7300.

Yours faithfully

**MICHAEL DOHERTY**



M:\Authors\VR\137623.doc



Level 1 171 Bigge Street Liverpool NSW 2170 | PO Box 1163 Liverpool BC NSW 1871 | DX 5034 Liverpool NSW  
Tel: (02) 9601 7300 | Fax: (02) 9824 0876 | Email: mail@dohertylaw.com.au | Website: www.dohertylaw.com.au

Liability limited by a scheme approved under Professional Standards Legislation

**AFFIDAVIT**

I, Garth Alan Paton, of Unit 1, 66 Wolseley Road Point Piper, Company Director,  
make oath and say:

1. Mr Barry James Small is a shareholder in Focus Thermal Technologies Ltd.
2. I am a Director of Focus Thermal Technologies Ltd.
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10. Following receipt of this correspondence, Mr Small telephoned my home and my wife's mobile and again made threats against us.
11. Both the police and my solicitor have advised me that no further contact, written or oral, should take place with Mr Small (Annexure 2).

**Sworn by the  
deponent at Sydney Australia  
on the sixth day of September, 2005**

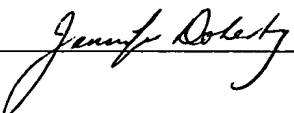
**Signature of deponent**



**Before me:**

Jennifer Doherty

*Signature & title of person  
before whom affidavit is sworn*

 , Solicitor



I certify I have sighted  
the original and this is a  
true and correct copy of  
same.

*Jennifer Doherty*  
SOLICITOR

## NSW Police [www.police.nsw.gov.au](http://www.police.nsw.gov.au)

The NSW Police is committed to providing support to victims of crime. The Police Officer in charge of your matter is:



Name: RODWELL

### ROSE BAY LOCAL AREA COMMAND

Tel 9362 6399 Fax 9362 6311 TTY 9211 3776

Time/Date of report: 5/8/04

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# Doherty Partners

Barristers & Solicitors

5 September 2005

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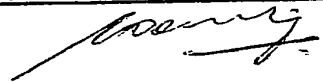
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**MICHAEL DOHERTY**



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**NSW POLICE**

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ABN 43 408 613 180

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LOCAL AREA COMMAND**

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Reg: 39930

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**ROSE BAY LAC**

NSW Police Headquarters Locked Bag 5102 Parramatta NSW 2124

Tel 02 93626399 Fax 93626311 TTY (02) 9211 3776 (Hearing/Speech impaired) Enet 44399 Efax 44311

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: ACN106396696 Pty LtdApplication No./Patent No.: PCT/AU02/00413 Filed/Issue Date: 09/24/2004Entitled: Thermal Storage DeviceACN 106396696 Pty Ltd

(Name of Assignee)

a corporation

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_ %

in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Mastercool International Pty Limited To: Focus Thermal Technologies (International) Pty Ltd  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

2. From: Focus Thermal Technologies Limited To: ACN 106396696 Pty Ltd  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

\_\_\_\_\_  
Signature

10 August 2005  
Date

Garth Paton  
Printed or Typed Name


612 9826 8500 or 612 9362 9981  
Telephone Number

Director & Solicitor  
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

BALDWIN SHELSTON WATERS  
Level 21  
60 Margaret Street  
SYDNEY NSW 2000

<b>RECEIVED</b>			
<b>BSW SYDNEY</b>			
12 APR 2002			
Mail No: 	181121		
To	Initials	Action	Date

Discovery House, Phillip ACT 2606  
PO Box 200, Woden ACT 2606  
Australia  
Phone +61 -2 6283 2211  
Facsimile +61 -2 6285 3593  
Internet <http://www.ipaustralia.gov.au>  
ABN 38 113 072 755

**RE:** Provisional Application No. **PR4009**  
in the name of **Focus Thermal Technologies (International) Limited**

**Your Ref:** 34982WOP00

Dear Madam/Sir

Receipt is acknowledged of your letter dated 27 March 2002.

Please find enclosed the original Deed of Assignment duly endorsed.

Yours faithfully,



Leeann Godschalx  
Patent Support Amendment Officer  
Patent Support  
11 April 2002

I certify that I have  
sighted the original and  
this is a true and correct  
copy of same  
*Janet Roberty*  
SOLICITOR

**DEED OF ASSIGNMENT OF PATENTS**

**between**

**MASTERCOOL INTERNATIONAL PTY LIMITED**  
**ACN 091 109 054**

**and**

**FOCUS THERMAL TECHNOLOGIES (INTERNATIONAL) PTY**  
**LIMITED**  
**ACN 098 576 704**

THIS DEED is made on

25<sup>th</sup> of March

2002

## PARTIES

1. **MASTERCOOL INTERNATIONAL PTY LIMITED (ACN 091 109 054)** of 21 Mellor St, West Ryde, Sydney, New South Wales, "Assignor".
2. **FOCUS THERMAL TECHNOLOGIES (INTERNATIONAL) PTY LIMITED (ACN 098 576 704)** of Unit 2, 12 Cunningham St, Moorebank, Sydney, New South Wales, "Assignee".

## RECITALS

- A. The Assignor has been granted the Patents in Australia and elsewhere.
- B. The Assignor has agreed to assign, transfer and set over to the Assignee all its rights, title and interest in the Patents including the right to apply for or obtain corresponding letters patent in any country of the Territory.
- C. The Assignor has not licensed the Patents.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 DEFINITIONS

In this deed unless the context otherwise requires or permits:

*Assignor* means *Mastercool International Pty Limited (ACN 091 109 054)*

*Assignee* means *Focus Thermal Technologies (International) Pty Limited (ACN 098 576 704)*;

*Patents* means the provisional patents particularised in the Schedule; and

*Territory* means the world.

#### 1.2 INTERPRETATION

In this deed unless the context otherwise requires or permits:

- (a) references to a party will include as the context requires respective executors, administrators, successors and permitted assigns;
- (b) references to a person includes any other entity recognised by law and vice versa;
- (c) references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
- (d) references to months and years means calendar months and years;
- (e) words denoting the singular number include the plural and vice versa;

- (f) words denoting one gender include every gender;
- (g) words denoting natural persons include any Corporation or other body corporate or Government Body and vice versa;
- (h) where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
- (i) every covenant or provision applying to or binding more than one person will bind them jointly and each of them severally;
- (j) delivery of this deed will be taken to have been given on the date it bears;
- (k) if any part of this deed is void or unenforceable or would be so unless severed, then the rest of the document will continue to have full force and effect;
- (l) the use of headings are only for convenience and do not affect interpretation; and
- (m) if the day on which any act, matter or thing is to be done under or pursuant to this deed is not a business day, that act, matter or thing may be done on the next business day. A business day is a day on which banks are open for general banking business.

## **2. ASSIGNMENT OF PATENTS AND OTHER RIGHTS**

As consideration for the payment by the Assignee to the Assignor of the sum of \$10,000 (this amount to be owed by the company on terms to be agreed) the Assignor as beneficial owner assigns to the Assignee:

- (a) the Patents and all rights arising from them in the Territory together with;
- (b) all corresponding rights obtainable in the Territory in respect of the inventions the subject of the Patents and in the priority dates of the Patents;
- (c) all know-how and technical information relating to the Patents; and
- (d) all rights, powers, liberties and immunities arising or to arise from any applications and from any letters patent granted in relation to the Patents to hold unto the Assignee absolutely from the date of this deed.

## **3. ASSIGNOR UNDERTAKING**

The assignor undertakes at the expense of the Assignee to do all acts and execute all documents necessary or desirable for effecting the title of the Assignee to the Patents and in case of default the Assignor hereby appoints the Assignee as its attorney for such purpose.

## **4. COSTS AND FEES**

All fees, costs and expenses incurred by the Assignor in connection with enabling the Assignee to be registered as the sole owner of the Patents shall be borne and paid by the Assignee.

## **5. STAMP DUTY**

All stamp duty and other government charges payable in respect of this deed shall be paid by the Assignee.



## **6. FURTHER ASSURANCES**

The Assignor agrees to deliver up to the Assignee on request all certificates of title, papers, plans, reports and items in relation to all the rights agreed to be assigned pursuant to **clause 2**.

## **7. REPRESENTATIONS AND WARRANTIES**

The Assignor represents, warrants and undertakes to the Assignee that:

- (a) the Assignor is not aware of any fact by which the Patents may be declared invalid, or any claim by which any Patent should be amended.
- (b) neither the execution of this deed nor the performance by the Assignor of its obligations will cause the Assignor to be in breach of any agreement to which it is a party or is subject;
- (c) the particulars of each Patent as set out in the Schedule are true and correct;
- (d) the Assignor has full and beneficial right and title to the Patents;
- (e) the Assignee shall have and enjoy quiet possession of the Patents uninterrupted by the Assignor or any person claiming under the Assignor;

## **8. LAW AND JURISDICTION**

### **8.1 GOVERNING LAW**

This deed is governed by the law in force in New South Wales.

### **8.2 SUBMISSION TO JURISDICTION**

The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this deed.

## **9. GENERAL**

### **9.1 AMENDMENT**

This deed may only be amended or supplemented in writing signed by the parties.

### **9.2 COUNTERPARTS**

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

### **9.3 ENTIRE AGREEMENT**

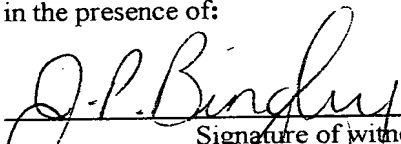
This deed and any annexures is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of this deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

### **9.4 COSTS**

The Assignee will pay the costs, fees and expenses in connection with this deed, and will be liable for stamp duty on this deed.


**EXECUTED AS A DEED in New South Wales**

**SIGNED SEALED AND DELIVERED** by )  
**MASTERCOOL INTERNATIONAL PTY LIMITED** )  
**(ACN 091 109 054)** )  
in the presence of: )

  
\_\_\_\_\_  
Signature of witness )

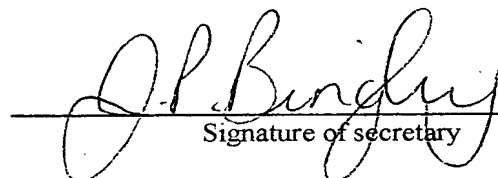
JAN PATRICIA BINGLEY  
\_\_\_\_\_  
Name of witness – please print )

90 AWABA ST MOSMAN  
\_\_\_\_\_  
Address of witness )


  
\_\_\_\_\_  
Signature of director

Barry James Small  
\_\_\_\_\_  
Name of director – please print

**SIGNED SEALED AND DELIVERED** by )  
**FOCUS THERMAL TECHNOLOGIES** )  
**(INTERNATIONAL) PTY LIMITED** )  
**(ACN 098 576 704)** )  
in accordance with its constitution in the presence of: )

  
\_\_\_\_\_  
Signature of secretary )

JAN PATRICIA BINGLEY  
\_\_\_\_\_  
Name of secretary – please print )

  
\_\_\_\_\_  
Signature of director

STUART JAMES BEIL  
\_\_\_\_\_  
Name of director – please print

**SCHEDULE: LIST OF PATENTS**

<b>1.</b>	<b>Australian Patent Number:</b>	<b>PQ4506</b>
	Description:	Carbonated Beverage System
	Applicant:	Mastercool International
	Inventor:	Barry James Small
	Date Filed:	9/12/1999
	Patent Status:	Provisional Patent (Lapsed 9/12/2000)
<b>2.</b>	<b>Australian Patent Number:</b>	<b>PR4368</b>
	Description:	Thermal Storage Device
	Applicant:	Mastercool International
	Inventor:	Barry James Small
	Date Filed:	1/12/1999
	Patent Status:	Provisional Patent (Lapsed 1/12/2000)
<b>3.</b>	<b>Australian Patent Number:</b>	<b>PR4009</b>
	Description:	Thermal Storage Device
	Applicant:	Mastercool International
	Inventor:	Barry James Small
	Date Filed:	28/3/2001
	Patent Status:	Provisional Patent (Current)

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LIMITED**

**Australian Company Number 098 576 704**

did on the twenty-fourth day of June 2002 change its name to

**FOCUS THERMAL TECHNOLOGIES LIMITED**

**Australian Company Number 098 576 704**

The company is a public company

The company is limited by shares

The company is registered under the Corporations Act 2001 and  
is taken to be registered in New South Wales and the date  
of commencement of registration is the twenty-ninth day of October, 2001.

Issued by the  
Australian Securities and Investments Commission  
on this twenty-fourth day of June, 2002.

David Knott  
Chairman

*David Knott*

I certify I have sighted  
the original and this is  
a true and correct copy  
of same.  
*Janet Doherty*  
SOLICITOR



CERTIFICATE

**DEED FOR SALE OF ASSETS**

**FOCUS THERMAL TECHNOLOGIES LIMITED**  
**A.C.N. 098 576 704**  
**(SUBJECT TO DEED OF COMPANY ARRANGEMENT)**

**AND**

**A.C.N 106 396 696 PTY LIMITED**  
**A.C.N. 106 396 696**

*I certify I have sighted  
the original and ~~I~~ that  
this is a true and correct  
copy of same  
Jennifer Delaney  
SOLICITOR*



**GILLIS DELANEY BROWN**

**Lawyers**

Level 6 179 Elizabeth Street Sydney NSW 2000 Australia  
Ph (02) 9394 1000 Fax (02) 9394 1100 [www.gdb.com.au](http://www.gdb.com.au)  
Ref: SWG/GDS/010672

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# DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)

Declaration  
Submitted  
With Initial  
Filing

OR

Declaration  
Submitted after Initial  
Filing (surcharge  
(37 CFR 1.16 (e))  
required)Attorney Docket  
Number

First Named Inventor

Barry James SMALL

## COMPLETE IF KNOWN

Application Number

10/509,297

Filing Date

28 March 2002

Art Unit

Examiner Name

## I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Thermal storage device

(Title of the Invention)

the specification of which



is attached hereto

OR



was filed on (MM/DD/YYYY)

09/24/2004

as United States Application Number or PCT International

Application Number

PCT/AU02/00413

and was amended on (MM/DD/YYYY)

(if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
2002244521	Australia	03/28/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

[Page 1 of 2]

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance completing the form, call 1-800-PTO-9199 and select option 2.

**DECLARATION — Utility or Design Patent Application**

Direct all correspondence to:	<input type="checkbox"/> The address associated with Customer Number:		OR	<input checked="" type="checkbox"/> Correspondence address below
<b>Name</b> Garth Paton				
<b>Address</b> Unit 1, 66 Wolseley Road				
<b>City</b> Point Piper		<b>State</b> NSW		<b>ZIP</b> 2027
<b>Country</b> Australia		<b>Telephone</b> 61 2 9362 9388		<b>Email</b> garth@synergythermal.com
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.				
<b>NAME OF SOLE OR FIRST INVENTOR:</b>		<input checked="" type="checkbox"/> A petition has been filed for this unsigned inventor		
<b>Given Name (first and middle [if any])</b> Barry James		<b>Family Name or Surname</b> Small		
<b>Inventor's Signature</b>				<b>Date</b>
<b>Residence: City</b> Sydney		<b>State</b> NSW	<b>Country</b> Australia	<b>Citizenship</b> Australia
<b>Mailing Address</b> 107 Warren Road				
<b>City</b> Smithfield		<b>State</b> NSW	<b>Zip</b> 2164	<b>Country</b> Australia
<b>NAME OF SECOND INVENTOR:</b> <i>assignee for and on behalf of non-signing inventor:</i>		<input type="checkbox"/> A petition has been filed for this unsigned inventor		
<b>Given Name (first and middle [if any])</b> Garth Alan		<b>Family Name or Surname</b> Paton		
<b>Inventor's Signature</b> As Company Director of ACN106396696 Pty Ltd (assignee of nonsigning inventor) <i>Garth Paton</i>				<b>Date</b> 09/06/2005
<b>Residence: City</b> Sydney		<b>State</b> NSW	<b>Country</b> Australia	<b>Citizenship</b> Australia
<b>Mailing Address</b> Unit 1, 66 Wolseley Road				
<b>City</b> Point Piper		<b>State</b> NSW	<b>Zip</b> 2027	<b>Country</b> Australia
<input type="checkbox"/> Additional inventors or a legal representative are being named on the _____ supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.				

THIS SALE DEED MADE <sup>x</sup> 28<sup>TH</sup> DAY OF <sup>x</sup> Sept 2004

**BETWEEN: FOCUS THERMAL TECHNOLOGIES LIMITED**  
**A.C.N. 098 576 704 (SUBJECT TO DEED OF COMPANY**  
**ARRANGEMENT) of 5/10 Lyn Parade, Prestons in the State of**  
**New South Wales ("Company")**

**AND: A.C.N. 106 396 696 PTY LIMITED A.C.N. 106 396 696 of 5/10**  
**Lyn Parade, Prestons in the State of New South Wales ("Secured**  
**Creditor")**

**RECITALS:**

- A. On 30 September 2003 the Company granted the Charge in favour of the Secured Creditor to secure repayment of the Advances.
- B. On 1 July 2004 the Deed Administrator was appointed voluntary administrator of the Company.
- C. On 28 July 2004 a meeting of creditors of the Company convened by the Deed Administrator pursuant to Section 439A(1) of the Corporation Act resolved that the Company execute the Deed of Company Arrangement.
- D. On 16 August 2004 the Deed Administrator, the Company and Paton executed the Deed of Company Arrangement.
- E. Under clause 5.3 of the Deed of Company Arrangement the Deed Administrator acknowledges that all assets, book debts and entitlements of the Company may be sold to the Secured Creditor to enable the Company to pay the sum referred to in clause 5.1 of the Deed of Company Arrangement into the Administration Fund.
- F. The Company has agreed to sell the Assets to the Secured Creditor and the Secured Creditor has agreed to purchase the Assets for the Purchase Price solely to enable the Company to pay the Administration Fund as contemplated in clause 5.3 of the Deed of Company Arrangement, on the terms and conditions set out in this Deed.
- G. The Company acknowledges that the Secured Creditor has paid the Sum Paid to the Company in part payment of the Purchase Price.

{SWG/NJK0140:1}



## OPERATIVE PART:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

- (a) In this deed unless the context otherwise requires:

**"Administration Fund"** means the Administration Fund under the deed of Company Arrangement;

**"Assets"** means all assets of the Company as at Completion including without limitation the following assets:

- (a) the Plant and Equipment;
- (b) the Intellectual Property;
- (c) the Sundry Debts; and
- (d) the Stock

but excluding the Excluded Assets;

**"ASIC"** means the Australian Securities & Investment Commission;

**"Balance of the Purchase Price"** means the Purchase Price (\$25,000.00) less the Sum Paid (\$15,000.00), being the sum of ten thousand dollars (\$10,000.00);

**"Charge"** means the Charge over the Company in favour of the Secured Creditor with ASIC registered number 991798.

**"Completion"** means the completion of the sale and purchase of the Assets on the Completion Date;

**"Completion Date"** means the date of this Deed or such other date as the parties may otherwise agree upon;

**"Deed Administrator"** means Grahame Hill;

**"Deed of Company Arrangement"** means the deed of company arrangement entered into by the Company, the Deed Administrator and Paton on 16 August 2004;

**"Encumbrances"** means any mortgage, charge (whether fixed or floating) pledge, lien (including, without limitation any unpaid Company's lien or similar),

- (b) an effective assignment or transfer of each item of Asset as the Secured Creditor requires to vest full possession and benefit of the Assets in the Secured Creditor;
  - (c) any waiver, consent or other document and do all such acts which the Secured Creditor may require to obtain a good title to the Sundry Debts, including all forms and documents necessary under any statute or regulation in relation to the Sundry Debts, and any power of attorney under which any document required to be delivered under this sub-clause has been signed or executed, and to enable the Secured Creditor to become legal owner of the Sundry Debts;
  - (d) all information, documents and records necessary to enable to Secured Creditor to recover the Sundry Debts for the benefit of the Secured Creditor; and
  - (e) a Tax Invoice for the sale of the Assets;.
- (5) On Completion the Secured Creditor must pay the Balance of the Purchase Price in accordance with clause 3.

## 5. SUNDRY DEBTS

- (1) The Company will upon request by the Secured Creditor at any time and from time to time after the execution of this Deed and payment of the Purchase Price, execute, sign and deliver all documents and do all things necessary or appropriate for transferring to and vesting the Sundry Debts in the Secured Creditor, or otherwise for giving effect to the terms of this Deed at the cost of the Company. This clause shall not merge on Completion and shall enure for the benefit of the Secured Creditor.

## 6. INTELLECTUAL PROPERTY

- (1) The Company must at the request and expense of the Secured Creditor do all things, sign all documents and perform all such acts as the Secured Creditor may from time to time reasonably require for the purpose of confirming or enforcing the Secured Creditor's title to the Intellectual Property in any part of the world, including waiving or assigning to the

Secured Creditor any and all moral rights that the Company's employees, agents or contractors may have in the Intellectual Property.

## **7. COMPANY'S WARRANTIES**

- (1) The Company represents and warrants to the Secured Creditor that each of the Warranties is true and correct at the date of this Deed and will continue to be true and correct on Completion.
- (2) The Company acknowledges and agrees that each of the Warranties are separate from the others and the interpretation of any one of the Warranties is not affected by any other warranty.
- (3) The Warranties do not merge on Completion.

## **8. SECURED CREDITOR'S WARRANTIES**

- (1) The Secured Creditor represents and warrants to the Company as at the date of this Deed and continuing to Completion that:
  - (a) the execution, delivery and performance of this Deed by the Secured Creditor will constitute legally valid and binding obligations of the Secured Creditor, enforceable in accordance with its terms;
  - (b) no meeting has been convened or resolution proposed or petition presented and no order has been made for the winding up of the Secured Creditor. No receiver, administrator, receiver and manager, provisional liquidator, liquidator or other officer of the Court has been appointed in relation to the Secured Creditor or the assets of the Secured Creditor or any of them; and
  - (c) the Secured Creditor is duly incorporated and has full corporate power to own, lease, operate and purchase the Assets.

## **9. GOODS AND SERVICES TAX**

- (1) Any consideration to be paid or provided for a supply made under or in connection with this Deed has been agreed without regard to any GST i.e. they are GST exclusive.

## SCHEDULE 2

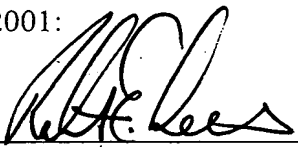
### INTELLECTUAL PROPERTY


1. PCT/AU02/00413 - TSU Patent Application.
2. PCT2003903499 - Carbonated Beverage System.
3. Trade Mark - Focus Logo No. 918901.
4. Trade Mark - PFN 57036 Ice Tower.

Executed as a Deed

**EXECUTION BY THE COMPANY:**

EXECUTED by FOCUS )  
TECHNOLOGIES LIMITED )  
A.C.N. 908 576 704 (SUBJECT TO )  
DEED OF COMPANY )  
ARRANGEMENT) in accordance  
with Section 127 of the Corporations  
Act 2001:

X   
\_\_\_\_\_  
Director/Secretary/Authorised Person  
Full Name: ROBERT LEES.

X   
\_\_\_\_\_  
Director/Secretary  
Full Name:

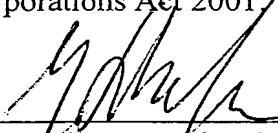
SIGNED FOR AND ON BEHALF )  
OF: )  
)  
)  
)  
)

X \_\_\_\_\_

X \_\_\_\_\_  
Witness:  
Full Name:

**EXECUTION BY THE SECURED CREDITOR:**

EXECUTED by A.C.N. 106 396 696 )  
PTY LIMITED A.C.N. 106 396 696 )  
in accordance with Section 127 of the )  
Corporations Act 2001: )

X   
\_\_\_\_\_  
Director/Secretary/Authorised Person  
Full Name: GLENN THOMPSON

X \_\_\_\_\_  
Director/Secretary  
Full Name: